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No. 02-1684

IN THE

Supreme Court of the United States

MICHAEL YARBOROUGH, Warden,
California State Prison—Los Angeles County,
Petitioner,

vs.

MICHAEL ALVARADO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1) What law governing custody under *Miranda* v. *Arizona*, 384 U. S. 436 (1966) is clearly established under this Court's precedents?

2) Is there a need for a separate "extension" analysis under the "unreasonable application" prong of 28 U. S. C. § 2254(d)(1)?

3) Is a suspect's status as a juvenile so determinative of the *Miranda* custody issue that a finding that a juvenile's interrogation is not custodial can be deemed to be almost *per se* unreasonable under § 2254(d)(1)?

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

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1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Both parties have given written consent to the filing of this brief.

This case involves yet another failure by a federal circuit court to accord a state court opinion the proper deference under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The Ninth Circuit's "failure to extend" analysis distorts its application of the AEDPA by elevating the defendant's juvenile status to the single factor that determined whether his interrogation was custodial. This is contrary to clearly established law governing *Miranda* custody and subverts the protection of the integrity of state court decisions granted by Congress through the AEDPA. Overturning this disregard of the AEDPA, and establishing standards to prevent similar errors in the future, will reduce the number of correct criminal judgments erroneously overturned on federal habeas corpus. This result is consistent with the rights of victims and society that the CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

Francisco Castañeda was murdered on the night of September 22, 1995, at a shopping mall in Santa Fe Springs, California. See *Alvarado* v. *Hickman*, 316 F. 3d 841, 844 (CA9 2002); *People* v. *Soto*, No. B114847 (Cal. App., February 4, 1999), App. to Pet. for Cert. C-3 to C-4.[2] Paul Soto, along with the habeas petitioner in the present case, Michael Alvarado, approached Mr. Castañeda that night with the intent to steal his truck. See App. to Pet. for Cert. C-3. Mr. Castañeda was shot at close range with a large caliber gun and killed. See *id.*, at C-4. Soto shot Castañeda, while Alvarado and Manuel Rivera hid the murder weapon in a park. See *ibid.*

About a month after the murder, Detective Cheryl Comstock contacted Alvarado's mother at her workplace and informed her that the police needed to talk to her son. See 316

2. This opinion is published in part as *People* v. *Soto*, 74 Cal. App. 4th 1099, 88 Cal. Rptr. 2d 688 (1999), but the portion on the *Miranda* claim was not certified for publication.

F. 3d, at 844. Alvarado's mother told Detective Comstock that the defendant's father would bring him to the sheriff's station for an interview. See *ibid.* Both parents accompanied him to the interview. See *ibid.* Alvarado was 17 years old at this time and had no criminal history. See *ibid.* The Alvarados gave Detective Comstock permission to interview their son. See App. to Pet. for Cert. C-12.

Alvarado was interviewed between 12:30 p.m. and 2:30 p.m. See *ibid.* He was never given a statement indicating that he had voluntarily agreed to the interview, nor was he read the *Miranda* v. *Arizona*, 384 U. S. 436 (1966) warnings. See 316 F. 3d, at 844. Alvarado's initial account of the night of the murder contained no reference to the murder or the disposal of the gun. See *ibid.* Detective Comstock questioned this version, noting that other witnesses had contradicted his account. See *ibid.*; App. to Pet. for Cert. C-13. Alvarado then divulged what really happened that night, providing details of the murder and his efforts to hide the weapon. See 316 F. 3d, at 844. Soon after this, Detective Comstock offered Alvarado the use of a phone, which he declined. See App. to Pet. for Cert. C-14. She then stated: "Okay. And we should be done here pretty quick. I'll get you out of here, so you can go about your activities." *Ibid.* The interview ended soon after this, and Alvarado went home with his parents. See *id.*, at C-15. About a month after the interview, Alvarado was charged with murdering Mr. Castañeda. See *ibid.*

Statements made at the interview were admitted against Alvarado at his trial. The jury convicted him of first-degree murder and attempted robbery. Soto was convicted of first-degree murder with the "special circumstance" of murder in the attempt to commit robbery and sentenced to life without parole. The trial court reduced Alvarado's conviction to second-degree murder, stayed sentence on the other charges, and sentenced him to 15-to-life. *Id.*, at C-4 to C-5. On appeal, he asserted that admitting the statements from the interview violated *Miranda*, see *id.*, at C-11, relying primarily upon *People* v.

Aguilera, 51 Cal. App. 4th 1151, 59 Cal. Rptr. 2d 587 (1996). See App. to Pet. for Cert. C-15. *Aguilera* involved a police station interview in which the suspect and his mother went with the police to the station at the officers' request. See 51 Cal. App. 4th, at 1159, 59 Cal. Rptr. 2d, at 590. The *Aguilera* court found that the interview was a custodial interrogation based upon its two-hour length and the intensity, aggressiveness, and intimidating nature of the questioning. See *id.*, at 1164-1165, 59 Cal. Rptr. 2d, at 594. The California Court of Appeal in the present case distinguished *Aguilera*, finding that the questioning in this case was materially less intense and aggressive. See App. to Pet. for Cert. C-17. Its test for custody was whether a reasonable person would feel free to leave under the totality of the circumstances. See *id.*, at C-11 to C-12. This standard was taken from *People* v. *Ochoa*, 19 Cal. 4th 353, 966 P. 2d 442 (1998), which in turn was taken from *Thompson* v. *Keohane*, 516 U. S. 99 (1995). *Ochoa*, *supra*, at 401-402, 966 P. 2d, at 471. The state court concluded: "We are satisfied that a reasonable person under the circumstances in which Alvarado was questioned would have felt free to leave." App. to Pet. for Cert. C-17. Therefore the interview was not custodial, and *Miranda* did not apply. The state court then affirmed Alvarado's conviction and sentence. See *id.*, at C-26.

On March 6, 2000, Alvarado filed a federal habeas petition. See 316 F. 3d, at 845. A magistrate judge found that he was free to leave the interview under a totality of the circumstances test, and the District Court adopted the finding and denied the petition. See *ibid.* The Ninth Circuit Court of Appeals reversed, finding that Alvarado was in custody at the time of his interview, and the California Court of Appeal's contrary conclusion was an incorrect and unreasonable application of clearly established federal law. See *id.*, 854-855.

The Ninth Circuit first made a *de novo* determination of the merits of the case. See *id.*, at 845. It held that the defendant's youth rendered his interrogation custodial under the circumstances of the case. See *id.*, at 849-851. After ascertaining the

clearly established legal principles, see *id.*, at 852, the court held that the state court opinion applied them unreasonably. It held that, by not addressing the defendant's age in its custody analysis, the California court's opinion was an unreasonable failure to extend Supreme Court precedent. See *id.*, at 853-854. The legal principle that the California Court of Appeal unreasonably failed to extend "is that juvenile defendants are accorded heightened procedural safeguards commensurate with their age and experience." See *id.*, at 853. This was derived from due process cases involving attacks on the voluntariness of confessions on the waiver of constitutional rights by juveniles. See *id.*, at 848-851. Concluding that the state court decision was unreasonable, the Ninth Circuit reversed the District Court and granted habeas. See *id.*, at 855-857. This Court granted certiorari on September 30, 2003.

SUMMARY OF ARGUMENT

As in *Lockyer* v. *Andrade*, the better approach to implementing the AEDPA in this case is to first determine the clearly established law. This case is also similar to *Andrade* in that for a *Miranda* "custody" determination the relevant law is clearly established only at a very general level. While the precedent governing custody under *Miranda* is not as confused as the proportionality law in *Andrade*, the fact-bound nature of the custody inquiry precludes more specific rules.

The comparatively few cases discussing custody clearly establish several general principles. *Beckwith* v. *United States* shows that it is physical custody, not the subject matter of the interview that governs *Miranda*. *Oregon* v. *Mathiason* and *California* v. *Beheler* equate *Miranda* custody with formal arrest or its functional equivalent. The fact that the interrogation takes place in the station house does not, by itself, mandate applying *Miranda*.

Berkemer v. *McCarty* provides the last significant addition to custody analysis. It reinforces the fact-bound nature of the

custody inquiry by refusing to draw a bright-line rule to govern traffic stops. There was simply no way to draw an accurate line with regard to this or any particular fact. The decision also reiterated *Beheler* and *Mathiason* in equating custody with an arrest. It further held that the custody issue was analyzed under an objective standard. These holdings were neatly summarized in *Thompson* v. *Keohane*, which stated that the test for custody was whether, in light of the circumstances of the interrogation, a reasonable person would feel that he or she was not at liberty to terminate the interrogation and leave.

The California court correctly identified and applied the clearly established law. It employed essentially the same standard as announced in *Thompson*. The fact-bound nature of the totality of the circumstances test makes finding an indistinguishable precedent from this Court's opinions next to impossible. A comparison of the facts of this case to the facts of this Court's custody cases show that none of this Court's precedents are on point. Therefore the California court's opinion was not contrary to clearly established law.

The Ninth Circuit improperly applied a separate "extension" analysis under the "unreasonable application" prong of § 2254(d)(1). The "unreasonable application" portion of § 2254(d)(1) analysis need only consider whether the state court's application of the law to the facts reached a reasonable result. There is no need to inquire whether the state court was reasonable in extending or not extending Supreme Court precedent. That issue is included in the analysis of what rule is "clearly established."

The Ninth Circuit's decision demonstrates how an extension inquiry confuses the analysis. Its analysis focused on Alvarado's age, making this factor essentially dispositive of the case under the Ninth Circuit's failure-to-extend analysis. Reliance on one factor to mandate a result is inconsistent with totality of the circumstances tests like the one governing *Miranda* custody. The Ninth Circuit's overreliance on this one factor to mandate a result subverted the AEDPA.

The California Court of Appeal's finding that there was no custody was reasonable. It properly concentrated on the defendant's main arguments, and appropriately distinguished the main case that he cited. Alvarado's questioning was not harsh or threatening, and his freedom was never conditioned on incriminating himself. He was told that he could phone others about 40 minutes into the interview and was eventually told that he would be allowed to go. While this interrogation is not as clearly noncustodial as cases like *Berkemer* or *Mathiason*, it is readily less custodial than clear custodial arrests or cases like *Orozco*. As in *Andrade*, the state court addressed a case in the middle ground between precedents

ARGUMENT

This case, like *Lockyer* v. *Andrade*, 538 U. S. 63, 155 L. Ed. 2d 144, 123 S. Ct. 1166 (2003) demonstrates the necessity of beginning the analysis of habeas claims under 28 U. S. C. § 2254(d)(1) by determining the relevant clearly established law. Following the since-disapproved circuit precedent of *Van Tran* v. *Lindsey*, 212 F. 3d 1143 (CA9 2000), the Ninth Circuit panel in this case first made its own determination of the merits of the case before applying the deferential standard of § 2254(d)(1). See *Alvarado* v. *Hickman*, 316 F. 3d 841, 845 (CA9 2002). As in *Andrade*, this misstep compromised the Ninth Circuit's AEDPA analysis. Its focus on the "correct" answer led it to focus excessively on one factor, the defendant's youth, when analyzing whether he was in custody. This in turn led the circuit court to a mistaken addition of an "extension" prong to the unreasonable application portion of § 2254(d). See Part II, *infra.* The AEDPA precludes the issuance of the writ based on mere disagreement with the state court. See *Price* v. *Vincent*, 538 U. S. __, 155 L. Ed. 2d 877, 886, 123 S. Ct. 1848, 1853 (2003). *Andrade* shows the better approach. "As a threshold matter here, we first decide what constitutes 'clearly established federal law, as determined by

the Supreme Court of the United States.' § 2254(d)(1)." *Andrade*, 155 L. Ed. 2d, at 155, 123 S. Ct., at 1172. Although this is not the only proper approach, see *ibid.*, it is unquestionably superior to the path taken by the Ninth Circuit.

I. What little law there is governing *Miranda* custody that is clearly established by this Court was applied by the California Court of Appeal.

A. The Test.

What law is clearly established by this Court should usually be a relatively straightforward inquiry. See *Lockyer* v. *Andrade*, 538 U. S. 63, 155 L. Ed. 2d 144, 155, 123 S. Ct. 1166, 1172-1173 (2003). "Section 2254(d)(1)'s 'clearly established' phrase 'refers to the holdings, as opposed to the dicta, of this Court's decisions at the time of the relevant state-court decision.' " *Id.*, 155 L. Ed. 2d, at 155, 123 S. Ct., at 1172 (quoting *Williams* v. *Taylor*, 529 U. S. 362, 412 (2000)). However, when the body of precedent is not a "model of clarity" the inquiry is more complicated. See *id.*, 155 L. Ed. 2d, at 155, 123 S. Ct., at 1173.

While the precedent governing custody under *Miranda* v. *Arizona*, 384 U. S. 436 (1966) is not as confused as the Eighth Amendment proportionality analysis in *Andrade*, it is established at a similar level of generality. In *Andrade*, this Court was plagued by detailed, but conflicting precedents that left the clearly established law at a very high level of abstraction. See *ibid.* Although the clearly established law governing *Miranda* custody is not conflicted, it is general. This is not due to any problems with the Court's administration of *Miranda*. Instead, since the custody inquiry is necessarily fact-bound, specific rules are difficult to find.

B. Clearly Established Law.

Custody is one element that dulls *Miranda*'s bright line. "Unfortunately, the task of defining 'custody' is a slippery one . . . ." *Oregon* v. *Elstad*, 470 U. S. 298, 309 (1985). While custody is a threshold requirement for applying *Miranda*, see *Miranda*, 384 U. S., at 477, the cases defining this term are relatively few and general.

Custody was a marginal issue in *Miranda*'s first few years. In *Mathis* v. *United States*, 391 U. S. 1 (1968), this Court held that a suspect is in custody even when he is being questioned about something other than the case under investigation. See *id.*, at 4. *Orozco* v. *Texas*, 394 U. S. 324 (1969) involved a raid of the suspect's boardinghouse residence at 4 a.m. See *id.*, at 325. He was confronted by four police officers in his bedroom. According to one of the officers, the suspect was under arrest and was not free to leave. See *ibid.* This testimony was dispositive on the custody issue. See *id.*, at 327.

The first step towards defining custody is found in *Beckwith* v. *United States*, 425 U. S. 341 (1976). Internal Revenue Service agents met Beckwith at a private home to interview him about potential criminal tax fraud. See *id.*, at 342-343. His motion to suppress his statements made during the interview under *Miranda* was denied by the District Court and Court of Appeals because Beckwith was not in custody during the interview. See *id.*, at 344. Beckwith asserted to this Court that since he was the focus of a criminal investigation by the Internal Revenue Service, he was "under 'psychological restraints' that are the functional and, therefore, the legal equivalent of custody." *Id.*, at 345. This Court rejected this expansion of *Miranda*. Although the *Miranda* Court stated that its rule applied to questioning, "while in custody or otherwise deprived of his freedom of action in any significant way," *Miranda*, 384 U. S., at 445, the *Beckwith* Court limited *Miranda* to custodial interrogation. See 425 U. S., at 346-347. The fact that the suspect was the focus of an investigation was irrelevant to the custody issue. See *id.*, at 347. Physical

custody, not the subject matter of the interview, determined whether *Miranda* applied.

The next significant explanation of custody occurred next year in a *per curiam* opinion, *Oregon* v. *Mathiason*, 429 U. S. 492 (1977). An officer investigating a burglary left his card at Mathiason's " 'apartment with a note asking him to call because "I'd like to discuss something with you." ' " *Id.*, at 493 (quoting Oregon Supreme Court opinion). Mathiason called the next day and agreed to meet at the state patrol office, about two blocks from his apartment. At the interview, Mathiason was told that he was not under arrest, but was suspected of the burglary. See *ibid.* The officer then falsely told Mathiason that his fingerprints were found at the scene. After a few minutes, Mathiason admitted to taking the property. See *ibid.* He was then given *Miranda* warnings and gave a taped confession. See *id.*, at 493-494.

The Oregon Supreme Court struck down the conviction, finding that the initial interrogation took place in the type of environment that warranted the *Miranda* warnings. See *id.*, at 492. This Court reversed. It held that Mathiason was never in custody because his freedom to leave was not restricted. See *id.*, at 495. He had been informed of his freedom to leave, and did so at the end of the interview. *Ibid.* The fact that the suspect is taken to the station house does not automatically require *Miranda* warnings before the suspect can be questioned. *Ibid.* "*Miranda* warnings are required only when there has been such a restriction on a person's freedom as to render him 'in custody.' It was *that* sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited." *Ibid.* (emphasis in original). This focus on the suspect's freedom was further reflected in the final conclusion that the officer's deception was irrelevant to the custody issue. See *id.*, at 495-496.

Another *per curiam* opinion provided additional insight into custody under *Miranda*. In *California* v. *Beheler*, 463 U. S. 1121 (1983) (*per curiam*), the individual voluntarily accompanied the police to the station house for questioning. See *id.*, at 1122. At that time he was informed that he was not under arrest. See *ibid.* He was then interviewed for 30 minutes without *Miranda* warnings and then permitted to go home. See *ibid.* *Miranda* did not apply to this interrogation because "Beheler was neither taken into custody nor deprived of his freedom of action." *Id.*, at 1123. The circumstances of each case must be taken into account, see *id.*, at 1125, but "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Ibid.* (quoting *Mathiason*, 429 U. S., at 495). As in *Mathiason*, the fact that the interrogation took place in the station house did not mandate *Miranda* warnings. See *ibid.*

In *Minnesota* v. *Murphy*, 465 U. S. 420 (1984), the Court addressed whether *Miranda* warnings had to be given before the suspect incriminated himself in a meeting with his probation officer. See *id.*, at 422-425. The Court noted that *Miranda*'s "extraordinary safeguard" applied only to custodial interrogation. See *id.*, at 430. The fact that Murphy's probation was considered custody for the purpose of habeas corpus was irrelevant, since custody is defined more narrowly under *Miranda* than for habeas corpus jurisdiction. See *ibid.* *Murphy* related custody to *Miranda*'s function. "Custodial arrest is said to convey to the suspect a message that he has no choice but to submit to the officer's will and confess." *Id.*, at 433. A "probation interview, arranged by appointment at a mutually convenient time" does not generate the same impression as a custodial arrest. See *ibid.* This conclusion was reinforced by the fact that Murphy was not restrained physically and could leave at any time. See *ibid.* Therefore, the probation interview did not satisfy *Beheler*'s definition of custody. See *id.*, at 430-431.

The relationship between custody and freedom was taken to its logical conclusion in the last significant *Miranda* custody case, *Berkemer* v. *McCarty*, 468 U. S. 420 (1984). This

decision addressed whether roadside questioning after a traffic stop constituted custodial questioning under *Miranda*, see *id.*, at 423.[3] The defendant asserted that a traffic stop is a significant deprivation of the occupant's freedom of action, thus qualifying for *Miranda* warnings under the literal language of that decision. See *id.*, at 435. While a traffic stop is a detention that "significantly curtails the 'freedom of action,' of the driver and the passengers," see *id.*, at 436, *Miranda* did not extend this far. *Miranda* must be strictly enforced where it applies, but it only applied "in those types of situations in which the concerns that powered the decision are implicated." *Id.*, at 437.

The temporary and public nature of the traffic stop argued against equating it with custody. These features minimized the coercive pressure of the situation, reducing the need for the *Miranda* warnings. See *id.*, at 437-438. Traffic stops were more analogous to "*Terry* stops," see *Terry* v. *Ohio*, 392 U. S. 1, 30-31 (1968), than formal arrests. See *Berkemer*, 468 U. S., at 439. These stops lack the inherent coercion that justifies *Miranda*, and therefore *Miranda* does not apply to *Terry* stops. See *id.*, at 440. Applying *Beheler*, the *Berkemer* Court noted that *Miranda* "became applicable as soon as a suspect's freedom of action is curtailed to a 'degree associated with a formal arrest.' " *Ibid.* (quoting *Beheler*, 463 U. S., at 1125 (*per curiam*)). If a traffic stop blossoms into treatment that places the detainee in custody as a practical matter, then *Miranda* applies. See *ibid.* While this muddies *Miranda* by failing to draw a bright line at traffic stops, this is a necessary compromise between law enforcement interests and the integrity of the *Miranda* rules. See *id.*, at 441.

While no bright line was drawn at traffic stops, *Berkemer* articulated two rules to help clarify custody analysis. First,

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3. The *Berkemer* Court also addressed whether *Miranda* governed the statements made by a suspect accused of a misdemeanor traffic offense. See *id.*, at 422-423. The *Berkemer* Court's conclusion that *Miranda* applied to this situation, see *id.*, at 434, is irrelevant to the present case.

even a seizure does not equal *Miranda* custody until it can "fairly be characterized as the functional equivalent of formal arrest." *Id.*, at 442; cf. *New York* v. *Quarles*, 467 U. S. 649, 655 (1984). Second, the custody issue is resolved under an objective standard. As in *Beckwith*, the officers' unarticulated subjective intent is irrelevant to custody. Instead, "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer*, *supra*, at 442. These two principles form the framework for custody analysis.

Subsequent custody cases add little to these rules. *Pennsylvania* v. *Bruder*, 488 U. S. 9 (1988) (*per curiam*) applied *Berkemer* to a similar set of facts and found no custody in a traffic stop. See *id.*, at 10. *Stansbury* v. *California*, 511 U. S. 318 (1994) (*per curiam*) reiterated the point that whether the suspect is the focus of an investigation is irrelevant to the custody question. See *id.*, at 323.

A habeas decision neatly sums up the clearly established principles governing custody under *Miranda*.

> "The ultimate 'in custody' determination for *Miranda* purposes, we are persuaded, fits within the latter class of cases ["mixed question" rather than historical fact]. Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve 'the ultimate inquiry': '[was] there a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.' " *Thompson* v. *Keohane*, 516 U. S. 99, 112 (1995) (quoting

Beheler, 463 U. S., at 1125 (quoting *Mathiason*, 429 U. S., at 495)) (footnote omitted).[4]

Since custody involves an inquiry into the totality of the circumstances, each case is dependent upon its special set of facts. This precludes bright-line rules, as demonstrated by *Berkemer*'s decision not to draw one with respect to traffic stops, or the Court's recognition that station house questioning is not necessarily custodial. Therefore, no single factor is dispositive when analyzing custody under *Miranda*. The clearly established law cannot get more specific than this passage from *Thompson*.

C. Applying the Standard.

There are two ways that a state court decision can be contrary to clearly established law.

> "A decision by a state court is 'contrary to' our clearly established law if it 'applies a rule that contradicts the governing law set forth in our cases' or if it 'confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent.' " *Price* v. *Vincent*, 538 U. S. __, 155 L. Ed. 2d 877, 885, 123 S. Ct. 1848, 1853 (2003) (quoting *Williams* v. *Taylor*, 529 U. S. 362, 405-406 (2000)).

The California court's decision did not violate either test.

The California Court of Appeal identified and applied the clearly established standard governing *Miranda* custody. It quoted at length a passage from a California Supreme Court decision, *People* v. *Ochoa*, 19 Cal. 4th 353, 401-402, 966 P. 2d 442, 471 (1998). See App. to Pet. for Cert. C-11 to C-12. The

4. *Thompson* held that *Miranda* custody was a mixed question of law and fact subject to *de novo* review on habeas corpus under 28 U. S. C. § 2254 as it then existed. See 516 U. S., at 106-107. Congress abrogated this holding when it amended § 2254 in AEDPA. See *Williams* v. *Taylor*, 529 U. S. 362, 408, n. * (2000).

passage in *Ochoa* upon which the Court of Appeal relies is a quotation of this Court's statement of the *Miranda* custody test in *Thompson*.[5] Even though the California Court of Appeal did not directly cite federal precedents, it applied the federal standard. This satisfies the first part of the "contrary to" test. See *Early* v. *Packer*, 537 U. S. 3, 9 (2002).

This Court has not confronted a *Miranda* custody case that is factually indistinguishable from the present case. Each of this Court's custody cases is distinguishable from this particular set of facts. There are many details relevant to the custody question. In this case, the suspect was brought in by his parents to the stationhouse after a detective told his mother that the police wished to speak with him about the night of the murder. See *supra*, at 2. The interview lasted about two hours, but Alvarado was informed he could use the phone about 40 minutes into the questioning. While Alvarado was a juvenile, he was 17. He was interviewed by one person, Detective Cheryl Comstock. See App. to Pet. for Cert. C-12 to C-15. While she challenged his initial, false account of the events, the questioning cannot reasonably be considered hostile.

Oregon v. *Mathiason*, 429 U. S. 492 (1977) is close with its nonconfrontational interview in the police station, but the interview in the present case lasted longer than the five minutes in *Mathiason*. See *id.*, at 493-494. The suspect in *Orozco* was confronted by four armed officers at his boardinghouse bedroom at 4:00 a.m. See 394 U. S., at 325. While *Berkemer* did have a station house interrogation, see 468 U. S., at 423, this was after the suspect had been formally arrested at a traffic stop. The traffic stop setting of Berkemer's first interrogation distinguishes it from the present case's station house setting. *Beheler* involved a comparatively short 30-minute interview,

5. While *Ochoa* omits certain parts from the passage in *Thompson* in its quotes, these omissions are inconsequential. They primarily omit references to federal habeas corpus. Compare *Ochoa*, 19 Cal. 4th , at 401-402, 966 P. 2d, at 471, with *Thompson*, 516 U. S., at 112-113.

and the suspect accompanied the police to the station from his house, see 463 U. S., at 1122, rather than coming with his parents. In *Murphy*, the suspect met with a probation officer with whom he regularly met, see 465 U. S., at 422-424, rather than a police detective who had no prior dealings with Alvarado. Alvarado's circumstances in the present case are neither clearly as custodial as a case where this Court has found custody nor clearly equally or less custodial than a case where this Court has not found custody.

Since the California Court of Appeal correctly identified the controlling legal standard and this Court has not rendered a factually indistinguishable decision, the state court decision is not contrary to clearly established law.

II. There is no need for a separate "extension" analysis under the "unreasonable application" prong of § 2254(d)(1).

The present case demonstrates that it is necessary to further refine what is an "unreasonable application" of federal law under § 2254(d)(1). The Ninth Circuit held that "this case is best analyzed under the 'unreasonable application' clause, which permits a writ of habeas corpus only if the judgment of the state court '(2) . . . fails to extend a clearly established legal principle to a new context in a way that is objectively unreasonable.' " *Alvarado* v. *Hickman*, 316 F. 3d 841, 853 (CA9 2002). The principle that the California Court of Appeal allegedly failed to extend "is that juvenile defendants are accorded heightened procedural safeguards commensurate with their age and experience." *Ibid.* Since juveniles were more susceptible to making involuntary confessions, "[i]t cannot reasonably be argued that a factor so important in analyzing the conduct of a custodial interrogation can become insignificant in the analysis of the circumstances that give rise to the situation namely, in the factual setting that determines whether a juvenile is, in fact, in 'custody.' " *Ibid.* This wrongheaded attempt to graft a

specific test onto a clearly established general rule demonstrates that it is necessary for this Court to resolve the failure-to-extend issue.

A. An Unnecessary Extension.

The "unreasonable application" prong of 28 U. S. C. § 2254(d)(1) generally involves the state court's application of "the correct legal rule from [Supreme Court] cases to the facts of a prisoner's case . . . ." See *Williams* v. *Taylor*, 529 U. S. 362, 406 (2000). *Williams* also noted that the Fourth Circuit, in *Green* v. *French*, 143 F. 3d 865, 869-870 (1998) held that "a state-court decision also involves an unreasonable application of this Court's precedent if the state court either unreasonably extends a legal principle from our precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." *Williams*, *supra*, at 407. *Williams* expressly reserved the question whether *Green*'s " 'extension of legal principle' " analysis was correct. See *id.*, at 408-409. The plurality opinion in *Ramdass* v. *Angelone*, 530 U. S. 156, 166 (2000) included it in its summary of *Williams*' holding, but *Penry* v. *Johnson*, 532 U. S. 782, 792 (2001) omitted it. Decisions after *Penry* have also omitted the extension language in their summary of the unreasonable application prong. See, *e.g.*, *Mitchell* v. *Esparza*, 540 U. S. __ (No. 02-1369, Nov. 3, 2003) (slip op., at 6) (*per curiam*); *Lockyer* v. *Andrade*, 538 U. S. 63, 155 L. Ed. 2d 144, 157-158, 123 S. Ct. 1166, 1174 (2003). In *Ramdass*, the state court's refusal to extend the precedent was not only reasonable but correct, see 530 U. S., at 170, so there was no need to inquire in depth about the consequences of an unreasonable refusal to extend. The brief attention to this question in a plurality opinion seems insufficient to resolve a question expressly reserved in *Williams*, and the question should be regarded as unresolved to this point. *Amicus* CJLF submits that the "extension of legal principle" prong of *Green* is unnecessary and would serve only to complicate the analysis.

Common to both the "contrary to" and "unreasonable application" prongs of § 2254(d)(1) is the requirement that the rule in question be "clearly established." For the most part, "whatever would qualify as an old rule under our *Teague* [v. *Lane*, 489 U. S. 288 (1989)] jurisprudence will constitute 'clearly established Federal law . . .' under § 2254(d)(1)." *Williams*, 529 U. S., at 412; see also *Sawyer* v. *Smith*, 497 U. S. 227, 236 (1990) (using "clearly established" in *Teague* context). This *Teague*-like inquiry includes the question of whether a preexisting precedent applies to the context of the present case.

In *Butler* v. *McKellar*, 494 U. S. 407 (1990), the state court was confronted with the question of whether the rule of *Edwards* v. *Arizona*, 451 U. S. 477 (1981) applied to a police request for waiver of *Miranda* rights for a different offense, when the suspect had already invoked his rights for the offense for which he had been arrested. See *Butler*, *supra*, at 410-411. The question was debatable at the time of the state decision, *id.*, at 415, and the subsequent extension of *Edwards* to this context was therefore a "new rule." In § 2254(d)(1) terms, there was no "clearly established Federal law" governing the different-offense situation, although the law governing the same-offense situation had been clearly established in *Edwards*. Similarly, in *Caspari* v. *Bohlen*, 510 U. S. 383, 395 (1994), no Supreme Court precedent established that the Double Jeopardy Clause applied to noncapital sentencing, and the extension of *Bullington* v. *Missouri*, 451 U. S. 430 (1981) from the capital context to noncapital would have been a new rule. See also *Gilmore* v. *Taylor*, 508 U. S. 333, 350 (1993) (O'Connor, J., concurring in the judgment) (extension of *Winship* line would have been a new rule).

Williams itself provides the example of a case granting relief. The Virginia Supreme Court had extended the rule of *Lockhart* v. *Fretwell*, 506 U. S. 364 (1993) to a new context where it should not apply. *Strickland* v. *Washington*, 466 U. S. 668, 694 (1984) had generally defined "prejudice" for ineffective assistance claims as a "reasonable probability that . . . the result of the proceeding would have been different." *Lockhart* had recognized an exception where the allegedly deficient performance "does not deprive the defendant of any substantive or procedural right to which the law entitles him," 506 U. S., at 372, an exception noted in *Strickland* itself. See 466 U. S., at 695 ("no entitlement to the luck of a lawless decisionmaker"). But *Williams* involved the jury's consideration of mitigating evidence, see 529 U. S., at 415 (opinion of O'Connor, J.), a procedural right to which Williams *was* entitled. Hence, the state court had both extended *Lockhart* to a context where it should not reach, and failed to apply the general rule of *Strickland* in a context where it does apply. This error was "contrary to that clearly established federal law . . . ." *Id.*, at 413. A separate "unreasonable application" inquiry was not necessary in *Williams*, and it would not be necessary in any case where the "extension of legal principle" analysis would properly result in a grant of relief. The statement of the *Williams* rule in *Penry*, 532 U. S., at 792, and the subsequent cases should be confirmed as a complete statement of the required analysis.

B. Subverting General Rules.

The Ninth Circuit's decision demonstrates how the phrase "extends a legal principle" confuses the analysis. In this case the relevant clearly established legal principle is very general, requiring *Miranda* custody to be examined under a totality of the circumstances test. See *supra*, at 13. The Ninth Circuit's "failure-to-extend" analysis focused on Alvarado's juvenile status. See 316 F. 3d, at 853. This became the Ninth Circuit's foot in the door, allowing it to elevate its disagreement with the state court over the custody issue, see *id.*, at 850, into a grant of habeas corpus in spite of the AEDPA's deferential standard. Although the Ninth Circuit's independent analysis of the custody issue purportedly examined the totality of the circumstances, see *ibid.*, its failure-to-extend analysis effectively allowed this case to turn on a single factor—Alvarado's age.

This effectively elevates one element of the circumstances surrounding defendant's questioning into the decisive factor on the custody issue. Analysis like this subverts the totality-of-the-circumstances test for custody, and is inconsistent with this Court's "unreasonable application" decisions.

General, fact-bound rules inherently resist efforts to be subdivided through rigid tests for particular subdivisions. For example, this Court has refused to create a *per se* rule defining the relationship between a traffic stop and *Miranda* custody. While an ordinary traffic stop was not the type of encounter that needed the *Miranda* warnings, other circumstances could elevate this encounter into the equivalent of a custodial arrest. See *Berkemer* v. *McCarty*, 468 U. S. 420, 440 (1984). Any bright-line rule was too imprecise for the fact-bound custody inquiry. Requiring the *Miranda* warnings at every traffic stop would hamper police without advancing Fifth Amendment interests, while a rule that traffic stops could never evolve into a custodial interrogation would subvert *Miranda*. See *id.*, at 441.

Probable cause is another example of how a broad rule is incompatible with rigid subrules. *Illinois* v. *Gates*, 462 U. S. 213 (1983) determined that the probable cause issue was decided by examining the totality of the circumstances of each case. See *id.*, at 230-231. This test simply could not be subdivided into more specific rules. Probable cause was a fluid concept "not readily, or even usefully, reduced to a neat set of legal rules." *Id.*, at 232. The two prongs of the prior test for analyzing whether an informant's tip supported a search warrant, " 'veracity' " and " 'basis of knowledge,' " while relevant, did not have independent importance. See *id.*, at 233. The absence of one factor could be made up by a greater strength in the other factor, and neither factor had to be present if there were "some other indicia of reliability." *Ibid.* Therefore the rigid rule of *Spinelli* v. *United States*, 393 U. S. 410 (1969) concerning probable cause and informant tips had to be overruled. See *Gates*, *supra*, at 238.

This Court has rejected attempts to graft specific subrules onto general rules through federal habeas corpus. The Sixth Amendment guarantee of adequate representation is governed by a broad rule meant to deal with a wide variety of factual circumstances. That is, "whether, in light of all the circumstances, the identified acts were outside the wide range of professionally competent assistance." *Strickland* v. *Washington*, 466 U. S. 668, 690 (1984). *Strickland* expressly rejected "detailed guidelines" and "rigid requirements." *Ibid.* In *Bell* v. *Cone*, 535 U. S. 685 (2002), the circuit court had ruled that *Strickland* mandated a closing argument in every case. See *id.*, at 693. This Court rejected this attempt to short circuit *Strickland*'s general test with a *per se* rule. See *id.*, at 701-702. Similarly, in *Wright* v. *West*, 505 U. S. 277 (1992) this Court effectively rejected an attempt to replace the general rule on the sufficiency of the evidence for conviction of *Jackson* v. *Virginia*, 443 U. S. 307 (1979) with a more specific rule for theft cases. See *West*, *supra*, at 313-314 (Souter, J., concurring in the judgment).

It is similarly wrong to give talismanic status to Alvarado's age. While this factor may be relevant to the custody issue, it is not dispositive by itself. Therefore, the California court's failure to mention this factor in its opinion does not make it automatically unreasonable.

III. The California Court of Appeal's holding that there was no custody is reasonable.

The Ninth Circuit's reasonable application analysis is hopelessly compromised by a series of misunderstandings of the AEDPA. Its focus on the alleged error of the California court's holding allowed it to concentrate on Alvarado's youth to the exclusion of other factors. See *supra*, at 16. This error was exacerbated by its "extension" analysis, which allowed it to subvert the totality of the circumstances test for custody by creating a bright-line rule for juveniles. See Part II, *supra*.

Finally, its analysis is further compromised by its reliance on the now disapproved clear error standard in assessing the state opinion's reasonableness. Compare *Alvarado* v. *Hickman*, 316 F. 3d 841, 855 (CA9 2002), with *Lockyer* v. *Andrade*, 538 U. S. 63, 155 L. Ed. 2d 144, 158, 123 S. Ct. 1166, 1174-1175 (2003). If any decision in this case is unreasonable, it is the Ninth Circuit's.

The California court's opinion sensibly focused on the defendant's main contention, that the case was controlled by *People* v. *Aguilera*, 51 Cal. App. 4th 1151, 59 Cal. Rptr. 2d 587 (1996). See App. to Pet. for Cert. C-15. For a state appellate court to focus its attention on the appellant's primary argument is "entirely acceptable." *Early* v. *Packer*, 537 U. S. 3, 9 (2002) (*per curiam*). As the California court concluded, *Aguilera* was distinguishable from the facts of the present case. Most importantly, an officer in *Aguilera* told the suspect that his going home was dependent upon how quickly he told the truth. See 51 Cal. App. 4th, at 1159, 59 Cal. Rptr. 2d, at 590-591. Indeed, as the interrogation proceeded, one officer told the suspect that he would not leave until he told them the name of the girl who was a witness to the incident. See *id.*, at 1160, 59 Cal. Rptr. 2d, at 591. The present case did not involve any threats such as these, and was thus clearly distinguishable. See App. to Pet. for Cert. C-17.

The California court's conclusion that the interrogation was not custodial is objectively reasonable. As it noted, there were no threats that Alvarado could not leave until he told the truth. See *ibid.* While Detective Comstock did question Alvarado's initial, misleading account of what took place on the night of the murder, as the California court properly noted, he was not subject to "intense pressure . . . ." See *ibid.* This part of the interview was recounted by the California court, and supports this conclusion.

> "Detective Comstock said: 'Okay, we did real good up until this point and everything you've said it's pretty accurate till [*sic*] this point, except for you left out the shooting.' Alvarado asked: 'The shooting?' Detective Comstock repeated: 'Uh huh, the shooting.' Alvarado said: 'Well I had never seen no shooting.' Detective Comstock responded: 'Well I'm afraid you did.' Alvarado repeated his statement that he had seen no shooting. Detective Comstock informed Alvarado that she had witnesses who said 'quite the opposite.'
>
> "She told Alvarado: 'So why don't you take a big [deep] breath, like I told you before, the very best thing just to be honest. I don't have three notebooks full of notes because I haven't been talking to people and there's no way you could have this many people involved in something like that and people making deliveries did uh, the delivery trucks making deliveries, people sitting in donut shops doing things and your group and everybody is not going to lie about this, okay? You can't have that many people get involved in a murder and expect that some of them aren't going to tell the truth, okay? Now granted if it was maybe one person, you might be able to keep your fingers crossed and say, god I hope he doesn't tell the truth, but the problem is . . . that they have tell the truth, okay? Now all I'm simply doing is giving you the opportunity to tell the truth and when we got that many people telling a story and all of a sudden you tell something way far fetched different.' " *Id.*, at C-13; see also J. A. 101-102.

Questioning a suspect's account does not force the police to give *Miranda* warnings. The purpose of questioning is to elicit information, and when an officer believes that the suspect is not telling the truth, it is appropriate to contradict the suspect. What matters is whether the suspect feels free to leave. These mild rebukes did not convey to Alvarado any idea that he was not free to leave.

Another objective factor that could weigh in favor of custody is the two-hour length of the interview. See *supra*, at 3. While a longer interview makes a custody finding more likely, there can be no hard and fast rule governing the relation-

ship between the length of the interrogation and the custody issue. In this case, it is not necessary to determine whether a two-hour interrogation tips the scale because Alvarado was told that he could use the phone about 40 minutes into the interview. See *Alvarado*, 316 F. 3d, at 854, and n. 10. Contact with the outside world mitigates the loss of control or separation from the outside that is consistent with custody. Later statements from Detective Comstock telling Alvarado that he would be free to leave reinforces the notion that Alvarado was not in custody.

Andrade, *supra*, confronted a state court decision in between two of this Court's precedents. Andrade's punishment relative to his culpability was more severe than what was upheld in *Rummel* v. *Estelle*, 445 U. S. 263 (1980), but less severe than what was struck down in *Solem* v. *Helm*, 463 U. S. 277 (1983). See *Andrade*, 155 L. Ed. 2d, at 157, 123 S. Ct., at 1174. The state court's decision to uphold a sentence that existed in the twilight zone between *Solem* and *Rummel* was not unreasonable. See *id.*, 155 L. Ed. 2d, at 159, 123 S. Ct., at 1175. The present case fits the same pattern.

The encounter was longer and less clearly consensual than those upheld in *Oregon* v. *Mathiason*, 429 U. S. 492 (1977) (*per curiam*) and *California* v. *Beheler*, 463 U. S. 1121 (1983) (*per curiam*). On the other hand, the interrogation in this case does not have trademarks of a classic custodial interrogation. Alvarado was never told that he was arrested, he was allowed contact with the outside world, he came to the station with his parents, and was not subject to intense, hostile questioning from a group of officers. His encounter was less custodial than the 4:00 a.m. surprise encounter with four officers in *Orozco* v. *Texas*, 394 U. S. 324 (1969), or a traditional custodial arrest, or even the type of encounter found in *Aguilera*. Existing in this middle zone between unquestionably noncustodial and the clearly custodial, Alvarado's questioning may reasonably be considered noncustodial.

This conclusion is reinforced by the comparative unreasonableness of the Ninth Circuit's analysis. The assertion that custody must be judged in light of Alvarado's lack of minimal record, see 316 F. 3d, at 845, is extremely difficult to square with this Court's *Miranda* precedents. Custody is determined under an objective standard. See *Thompson* v. *Keohane*, 516 U. S. 99, 112 (1995). Objectivity with respect to the custody test is typically expressed as rendering irrelevant the unexpressed motivations of the interrogating officers. See *Berkemer* v. *McCarty*, 468 U. S. 420, 442 (1984). However, the Ninth Circuit's creation of subrules for various suspects also threatens *Miranda*'s objectivity. One of *Miranda*'s chief virtues is its clarity. See *Arizona* v. *Roberson*, 486 U. S. 675, 680 (1988). Subdividing its broad "reasonable person" rule for custody into various subrules threatens what clarity *Miranda* has. Since custody already muddies *Miranda*, see *Oregon* v. *Elstad*, 470 U. S. 298, 309 (1985), there is no reason to further complicate the rule by making its application dependent upon the personal characteristics of the individual.

Miranda is exclusively concerned with police coercion. "*Miranda* protects defendants against government coercion leading them to surrender rights protected by the Fifth Amendment; it goes no further than that." *Colorado* v. *Connelly*, 479 U. S. 157, 170 (1986). Relying on the suspect's inexperience with the law or his youth pulls *Miranda* away from these moorings and dilutes its objectivity. If hearing voices from God is irrelevant to the validity of a *Miranda* waiver, see *id.*, at 170-171, then it was also reasonable for the California court to not address Alvarado's age and inexperience in its custody analysis. Since the state court's decision was reasonable, this collateral attack on a final judgment can be dismissed without redeciding the merits.

CONCLUSION

The decision of the Ninth Circuit Court of Appeals should be reversed.

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Respectfully submitted,

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